No. 92-1819

Supreme Court, U.S.
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In The

Supreme Court of the United States

LOUIS EDMONDS, a minor by TANEIKA JAMES, mother and natural guardian, and TANEIKA JAMES, in her own right,
Petitioners,

vs.

THE WESTERN PENNSYLVANIA HOSPITAL, RADIOLOGY ASSOCIATES OF WESTERN PENNSYLVANIA, P.C., NEAL B. SIMMONS, M.D. and HARVEY L. NEIMAN, M.D.,
Respondents.

LOUIS EDMONDS, a minor by TANEIKA JAMES, mother and natural guardian and TANEIKA JAMES, in her own right,
Petitioners,

vs.

WYNNE COOPER, M.D.,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

BRIEF IN OPPOSITION FOR RESPONDENTS RADIOLOGY ASSOCIATES OF WESTERN PENNSYLVANIA, P.C. AND HARVEY L. NEIMAN, M.D.

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QUESTIONS PRESENTED FOR REVIEW

I. WHETHER PETITIONER LACKS STANDING TO BRING A JUSTICIABLE CLAIM BEFORE THIS COURT?

II. WHETHER 42 Pa. C.S. § 8305(a) IS CONSTITUTIONAL AS IT DOES NOT THROUGH STATE ACTION DENY DUE PROCESS OR EQUAL PROTECTION AND IS RATIONALLY RELATED TO A LEGITIMATE STATE INTEREST?

III. WHETHER THERE IS A LACK OF DECISIONAL CONFLICT BETWEEN UNITED STATES COURTS OF APPEALS SUCH THAT THIS COURT SHOULD NOT EXERCISE ITS JUDICIAL DISCRETION TO ISSUE A WRIT OF CERTIORARI?

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No. 92-1819

Supreme Court of the United States

October Term, 1992

LOUIS EDMONDS, a minor by TANEIKA JAMES, mother and natural guardian, and TANEIKA JAMES, in her own right,

Petitioners,

vs.

THE WESTERN PENNSYLVANIA HOSPITAL, RADIOLOGY ASSOCIATES OF WESTERN PENNSYLVANIA, P.C., NEAL B. SIMMONS, M.D. and HARVEY L. NEIMAN, M.D.,

Respondents.

LOUIS EDMONDS, a minor by TANEIKA JAMES, mother and natural guardian and TANEIKA JAMES, in her own right,

Petitioners,

vs.

WYNNE COOPER, M.D.,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

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BRIEF IN OPPOSITION FOR RESPONDENTS RADIOLOGY ASSOCIATES OF WESTERN PENNSYLVANIA, P.C. AND HARVEY L. NEIMAN, M.D.

COUNTER-STATEMENT OF THE CASE

Taneika James' (petitioner) wrongful birth lawsuit stems from respondents' alleged failure to more promptly report to her the results of an October 25, 1988 sonogram (Respondents' Appendix, p. 11a). This sonogram was reported as showing a fetal abnormality (a cranial cyst) in petitioner's fetus whose mean gestational age at that time was 25.3 weeks (Respondents' Appendix, p. 6a).

Petitioner alleges she was not provided with the benefit of this information until December 29, 1988, a time too late to consider the option of abortion; she further contends that such option existed on October 25, 1988 (Respondents' Appendix, pp. 6a, 9a & 12a).

As a result, petitioners filed causes of action for wrongful birth (Taneika James in her right) and wrongful life (Taneika James as mother and natural guardian of Louis Edmonds). Respondents successfully challenged the existence of these causes of actions by raising the bar provided for by Pennsylvania's Wrongful Birth and Wrongful Life Statute (42 Pa. C.S. § 8305(a) and (b)). Petitioners long ago abandoned their right to challenge the dismissal of their wrongful life claim, opting instead to contest only the constitutionality of Pennsylvania's Wrongful Birth Provision (42 Pa. C.S. § 8305(a)) (*See* Petitioners' Appendix D, p. 12a).

SUMMARY OF ARGUMENT

Petitioner fails to bring a justiciable case or controversy to this Court. She lacks standing to do so as she has suffered no injury in fact as a result of the enactment of Pennsylvania's Wrongful Birth Act, 42 Pa. C.S. § 8305(a). If the case is justiciable, Pennsylvania's Wrongful Birth Act is a proper constitutional exercise of the legislature's right to enact legislation rationally related to its

legitimate interest in valuing life over death. The Wrongful Birth Act does not foster state action which directly impacts upon a woman's right to exercise the option of abortion.

No conflict among the United States Courts of Appeals exists regarding the constitutionality of wrongful birth statutes as the one enacted by the Pennsylvania legislature. There is no reason for this Court to exercise its judicial discretion to grant the petition.

REASONS FOR DENYING THE WRIT

I.

PETITIONER LACKS STANDING TO BRING A JUSTICIABLE CLAIM BEFORE THIS COURT.

As an Article III Court[1], only justiciable claims made by parties with standing may properly come before this Court. *Flast v. Cohen,* 392 U.S. 83, 94-95 (1968). A litigant who lacks standing deprives this Court of the power to adjudicate a case or controversy. *Id.* at 101; *Association of Data Processing Services Organizations v. Camp,* 397 U.S. 150, 151-152 (1970).

As this Court has previously stated:

> The essence of the standing inquiry is whether the parties seeking to invoke the court's jurisdiction have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult

1. U.S. Const. art. III.

> constitutional questions." As refined by subsequent reformulation, this requirement of a "personal stake" has come to be understood to require not only a "distinct and palpable injury," to the plaintiff, but also a "fairly traceable" causal connection between the claimed injury and the challenged conduct. (Citations omitted.)

Duke Power Company v. Carolina Environmental Study Group, Inc., et al., 438 U.S. 59, 72 (1978). Moreover, the moving party must be able to show that the relief she seeks would prevent or redress her injury. *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 38 (1976).

Such is not the case here. Petitioner cannot show a distinct and palpable injury in fact arising out of the Pennsylvania legislature's enactment of 42 Pa. C.S. § 8305(a). Therefore, she lacks standing to bring this case before this Court challenging the constitutionality of 42 Pa. C.S. § 8305(a).

The linchpin of petitioner's claim upon which she presupposes a right to constitutionally attack this statutory provision is that at the time of the negligent conduct by respondents she was possessed of privacy rights expounded upon in *Roe v. Wade*, 410 U.S. 113 (1973) and its progeny regarding the choice of aborting her fetus (Petition for Writ of Certiorari at pp. 15-16, 18). And, but for this statutory provision she would have a cause of action against respondents for wrongful birth or the respondents would have been more careful in promptly providing her with the necessary information to exercise her option of abortion (Petition for Writ of Certiorari, pp. 8, 14).

The fatal flaw of petitioner's argument is that she was not possessed of a right of choice to abort under *Roe v. Wade* and its

progeny on October 25, 1988. By her own admission, the age of the fetus was 25.3 weeks.[2] Under *Roe's* analysis there was a presumption of viability of the fetus at the time of the alleged negligent conduct by the respondents such that she had no choice concerning abortion absent strong evidence that failure to do so would compromise her life or health.[3] *Roe v. Wade, supra* at 160. The petitioner has made no claim that a threat to her life or health existed by carrying the fetus to term.

As petitioner was without a choice, she cannot be said to have suffered an injury in fact. Assuming for argument's sake that 42 Pa. C.S. § 8305(a) is constitutionally infirm, the petitioner can show no injury to herself that is likely to be redressed by a favorable decision. She lacks standing and is before this Court merely for an advisory opinion. This is impermissible.

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2. With only passing reference on one occasion does petitioner mention in her petition anything about the gestational age of the fetus at the time of the injury causing conduct. On page 18 appears the statement, "In the instant case . . . the negligence occurred prior to viability."

3. Indeed, at the time of the alleged injury causing conduct on October 25, 1988, a provision in Pennsylvania's Abortion Control Act (1982, June 11, P.L. 476, No. 138) made it a third degree felony to perform or induce an abortion when the fetus is viable absent a threat to maternal life or health. 18 Pa. C.S.A. § 3210(a).

II.

42 Pa. C.S. § 8305(a) IS CONSTITUTIONAL AS IT DOES NOT THROUGH STATE ACTION DENY DUE PROCESS OR EQUAL PROTECTION AND IS RATIONALLY RELATED TO A LEGITIMATE STATE INTEREST.

Petitioner's constitutional attacks on 42 Pa. C.S. § 8305(a) as violative of the Fourteenth Amendment's due process and equal protection provisions must fail as there is no state action. In order for there to be a Fourteenth Amendment violation, petitioner must show state action or involvement with the respondents' alleged denial of her right to abortion. *Shelley v. Kraemer,* 344 U.S. 1 (1948).

State action here would entail a direct affect or imposition of a significant burden on petitioner's right to an abortion. *Planned Parenthood v. Ashcroft,* 462 U.S. 476 (1983); *Maher v. Roe,* 432 U.S. 464 (1977). Legislation which does not place a government obstacle in the path of a woman who chooses to terminate her pregnancy will not be deemed unconstitutional. *Harris v. McRae,* 448 U.S. 297 (1980); *see Dansby v. Thomas Jefferson Hospital, et al.,* 1993 Pa. Super. Lexis 950 (March 19, 1993) (finding 42 Pa. C.S. § 8305(a) withstood constitutional challenge on equal protection grounds). In fact, although the government may not place obstacles in the path of a woman's exercise of her freedom of choice, it need not remove those not of its own creation. *Harris v. McRae, supra* at 316.

42 Pa. C.S. § 8305(a) does not regulate or directly affect the private decisions or agreements between patients and their physicians. A pregnant woman is no less free to exercise her right of choice since the passage of this statute. This statute does not restrict her right to an abortion or authorize action which impedes

it. *See, Dansby v. Thomas Jefferson Hospital, supra* at 4; *see also, Hickman v. Group Health Plan,* 396 N.W. 2d 10, 13 (Minn. 1986) (upholding the constitutionality of Minnesota's similar Wrongful Birth Act from due process and equal protection challenges on, *inter alia,* the ground that state action was lacking); and *Campbell v. United States,* 962 F.2d 1579, 1583 (11th Cir. 1992), *certiorari denied,* 61 U.S.L.W. 3581, 3583 (U.S. Feb. 23, 1993) (upholding from due process and equal protection challenges the State of Georgia's Supreme Court's bar of wrongful birth claims). As the Court of Appeals in *Campbell* stated:

> Georgia has not commanded doctors to interfere with a woman's constitutional rights. Georgia's reluctance to interject itself into the private relations of its citizens cannot be construed as affirming or encouraging private conduct for purposes of the Fourteenth Amendment. To find state action whenever a state has not acted would broaden state action to encompass practically all private conduct . . . [T]he Fourteenth Amendment regulates the relationship between the state and its citizens, not the private relations between citizens. (Citation omitted.)

Id. at 1583.

As the court below stated, the statutory provision called into question "merely extinguishes all causes of actions arising from a claim that but for the improper conduct of a medical provider, a child would have been aborted prior to birth." *Edmonds v. Western Pennsylvania Hospital,* 414 Pa. Super. 567, 607 A.2d 1083, 1087 (1992). Pennsylvania is expressing its legitimate interest in life over death, suggesting by this legislation that it will not recognize the birth of a child to be a damaging event for which someone

should be punished when this someone does not cause conception or injury. *Id.*, 607 A.2d at 1088 (concurring opinion of Wieand, J.).

As there is no state action obstructing petitioner's abortion choice by passage of 42 Pa. C.S. § 8305(a) and as it bears a rational relationship to a legitimate state interest[4], it is constitutional.

III.

THERE IS NO DECISIONAL CONFLICT BETWEEN UNITED STATES COURTS OF APPEALS SUCH THAT THIS COURT SHOULD EXERCISE ITS JUDICIAL DISCRETION TO ISSUE A WRIT OF CERTIORARI.

Petitioner cites decisions from two United States Courts of Appeals suggesting they pose a decisional conflict on which this Court should exercise its discretionary review pursuant to Supreme Court Rule No. 10.1(a). *See Campbell v. United States, supra* and *Robak v. United States,* 658 F.2d 471 (7th Cir. 1981). Contrary to petitioner's contentions, these cases are not in conflict on the same matter.

The United States Court of Appeals in *Robak* was faced with the narrow issue of anticipating whether the state of Alabama would recognize a wrongful birth cause of action (as its legislature and courts were silent on this issue) since the Court of Appeals was obligated to look to it to determine if the plaintiffs had a cause of action under the Federal Tort Claims Act (28 U.S.C. § 2671 *et seq.*). 658 F.2d at 474. The *Robak* court was dealing with the expanse of

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4. *See Dansby v. Thomas Jefferson Hospital, supra* at 4-5 ("Pennsylvania's wrongful birth statute is rationally designed to meet a legitimate state interest. Not only does it reflect the state's view that a handicapped child should not be deemed better off dead and of less value than a "normal" child, but it also reflects a refusal to dictate to the medical profession how to practice in the field of obstetrics").

state tort actions. As Alabama had not spoken on this issue, the court of appeals looked to sister states for guidance and concluded that a wrongful birth cause of action would be recognized in Alabama. *Id.* at 475-476.

In *Campbell v. United States, supra,* (as with *Robak* a cause of action for medical malpractice under FTCA), the Court of Appeals was faced with the question of whether the state of Georgia's existing decisional law barring a wrongful birth cause of action was constitutional. Here, the Georgia Supreme Court had already decided what the state's position on wrongful birth was. The Court of Appeals was simply asked to determine if the Georgia Supreme Court's decision was constitutional. It limited its analysis to the question whether there was state action obstructing a woman's right to abortion.

The *Campbell* court held there was no state action, stating:

> The state's decision not to recognize a cause of action for private conduct does not transform that conduct into state action. This is a classic tort action between a private plaintiff and the United States acting as a private employer. Since the plaintiffs have failed to allege a cause of action under Georgia law, the district court's judgment of dismissal is AFFIRMED.

Id. at 1584. It is interesting to note the similarity of issues between the *Campbell* case and the case now before this Court. Certiorari was denied in *Campbell* on February 23, 1993.[5]

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5. Another similar case on which certiorari was denied is *Azzolino v. Dingfelder,* 315 N.C. 103, 337 S.E. 2d (1985), *certiorari denied,* 479 U.S. 835 (1986), *rehearing denied,* 319 N.C. 227, 353 S.E. 2d 401 (1987).

Clearly, the United States Courts of Appeals in *Campbell* and *Robak* are not in conflict as they address different issues of state tort claims. Petitioner improperly attempts to create a conflict where none exists simply for the purpose of meeting one of the guidelines under Supreme Court Rule 10.1.

CONCLUSION

Petitioner lacks standing to bring a real case or controversy before this Court. She cannot show injury in fact caused by the affects of 42 Pa. C.S. § 8305(a). Any privacy right in choosing abortion over birth had passed at the time of respondents' alleged injury causing conduct. Her fetus was viable and there was no threat to maternal life or health. Therefore, 42 Pa. C.S. § 8305(a) could not have denied her a choice of abortion where no choice existed.

Assuming justiciability exists, 42 Pa. C.S. § 8305(a) did not prompt state action denying petitioner a right of choice in child birth matters. It neither regulated nor directly affected these rights.

Finally, no conflict among the United States Courts of Appeals exists concerning the constitutionality of wrongful birth statutes like that enacted by the Pennsylvania legislature. This case presents no issue upon which this Court should exercise its judicial discretion to grant a writ of certiorari.

Respondents respectfully request that this Court deny petitioner's request for a writ of certiorari to the Supreme Court of Pennsylvania.

Respectfully submitted,

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APPENDIX A — COMPLAINT IN CIVIL ACTION
G.D. 90-16421

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

No. GD 90-16421

LOUIS EDMONDS, a minor, by TANEIKA JAMES, mother and natural guardian, and TANEIKA JAMES, in her own right,

Plaintiffs,

vs.

THE WESTERN PENNSYLVANIA HOSPITAL, RADIOLOGY ASSOCIATES OF WESTERN PENNSYLVANIA, P.C., NEAL B. SIMMONS, M.D., and HARVEY L. NEIMAN, M.D.,

Defendants.

COMPLAINT IN CIVIL ACTION

Code: 007

Filed on Behalf of:
Plaintiffs.

Appendix A

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Pittsburgh, PA 15219

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JURY TRIAL DEMANDED

Appendix A

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally, or by an attorney, and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you, and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE:

The Allegheny County Bar Association
920 City-County Building
Pittsburgh, PA 15219
(412) 261-0518

Appendix A

COMPLAINT IN CIVIL ACTION

1. At all times material, plaintiff, Louis Edmonds (plaintiff-child) was and is an individual, infant, male child, born to his mother, Taneika James and is presently residing with plaintiff-mother in Pittsburgh, Allegheny County in the Commonwealth of Pennsylvania.

2. At all times material, plaintiff-mother, Taneika James, was an is an individual residing in Pittsburgh, Allegheny County in the Commonwealth of Pennsylvania.

3. At all times material, the defendant, The Western Pennsylvania Hospital was and is a hospital located in Pittsburgh, Allegheny County, Pennsylvania and the defendant, Radiology Associates of Western Pennsylvania, P.C. was an is an professional corporation with its office and principal place of business at the Western Pennsylvania Hospital at Pittsburgh, Allegheny County, Pennsylvania. At all times material, defendants, Neal B. Simmons, M.D. and Harvey L. Neiman, M.D. were and are individuals licensed to practice medicine, and specializing in the field of radiology, and at all times material they were and are agents, servants or employees of the defendant Radiology Associates of Western Pennsylvania, P.C.

4. At all times material a certain arrangement existed between Radiology Associates of Western Pennsylvania, P.C. and the Western Pennsylvania Hospital whereby the defendant Radiology Associates of Western Pennsylvania, P.C. rendered certain radiology services, including sonographic services, to the public at the defendant, The Western Pennsylvania Hospital.

5. At all times material, the applicable standard of care

required each of the defendants to convey in a timely manner to a physician who ordered sonographic studies on a patient the results of the sonographic studies performed.

6. At all times material, the applicable standard of care required all four defendants to convey by telephone to a physician who ordered sonographic studies performed upon a patient of the physician, the results of the sonographic studies performed upon the patient, when the studies revealed an abnormality. Said standard of care required that the results of said studies be conveyed by telephone or by some other expedited manner to the physician who ordered the studies.

7. Plaintiff-mother believes and avers that on or about June 8, 1988, she learned for the first time that she was pregnant. Plaintiff-mother was examined and followed by a certain physician or physicians who ordered the performance of a sonogram.

8. On or about October 25, 1988, sonography was performed upon plaintiff-mother. Plaintiff mother had no reason to believe that the sonogram performed on October 25, 1988 differed from a sonogram taken in August, 1988 and at all times, plaintiff-mother believed that the sonogram showed the normal development of her child.

9. Plaintiff-mother believes and avers that none of the defendants, or anyone upon their behalf conveyed in a timely manner, either by telephone, or otherwise to the physician attending plaintiff-mother, which physician had ordered the sonogram of October 25, 1988, the results of said sonogram. As such, plaintiff-mother did not know or have reason to know of any fetal abnormality in October or November, 1988.

10. Plaintiff-mother believes and avers that the findings or results of the October 25, 1988 sonogram did in fact show a fetal abnormality. Plaintiff-mother avers that a high quality comprehensive study was performed on October 25, 1988 which demonstrated a cystic structure (porencephalic cyst) in the region of the hippocampus of plaintiff-child, which measure 1.9 x 2.1 x an uncertain height. At the time of the sonogram, plaintiff child's compatible gestation age was 25.3 weeks with a range of 23.5 to 26.9 weeks.

11. On or about December 12, 1988, plaintiff-mother was again examined by her attending physician, and a sonogram was scheduled for December 27, 1988 at defendant The Western Pennsylvania Hospital. A sonogram was performed on December 27, 1988 which confirmed the presence of a porencephalic cyst, but enlarged since the previous sonogram.

12. Plaintiff-mother believes and avers that during the sonogram of December 27, 1988, two technicians or agents, servants or employees of the hospital indicated that they had observed something concerning the baby's brain. Plaintiff-mother requested additional information from the technicians, however, plaintiff-mother was told to discuss and review the results with her physician.

13. Plaintiff-mother avers that she attempted to discuss this sonogram with her attending physician at her next appointment with her attending physician on December 29, 1988 and requested that her attending physician determine whether or not the test was normal. It was at this time that plaintiff-mother was informed of the presence of a cyst on her child's head or brain and that she had not been informed of the presence of said cyst until her appointment with said Physician on or about December 29, 1988. Plaintiff-mother was then referred to a genetic clinic for evaluation.

14. Plaintiff-mother believes and avers that her attending physician desired to schedule an amniocentesis for two weeks from December 27, 1988. However, plaintiff-mother's mother insisted upon an immediate amniocentesis and as such, one was performed on January 3, 1989.

15. Plaintiff-mother believes and avers as a result of the performance of the amniocentesis on January 3, 1989, plaintiff-mother was subjected to premature labor for approximately six hours wherein plaintiff-mother was given medication to prevent the delivery of her child and cease contractions. Plaintiff-mother avers that she was not given any medications to reduce the pain and suffering she experienced while in premature labor on January 3, 1989.

16. Plaintiff-mother believes and avers that a second amniocentesis was performed on or about January 16, 1989, along with other diagnostic testing, due to the fact that the prior amniocentesis performed on January 3, 1989 at defendant, the Western Pennsylvania Hospital, was not accurate for diagnostic purposes. As such, plaintiff-mother was again subjected to an amniocentesis on January 16, 1989.

17. As a result of the amniocentesis or other diagnostic testing performed on January 16, 1989, plaintiff-mother was again subjected to the pain and suffering accompanying premature labor for an approximate eight hour period of time. Again, no medications to reduce the pain and suffering experienced in the premature labor were given to plaintiff-mother and medications were given to plaintiff-mother again to terminate the contractions and stop the labor or delivery of the child.

18. On or about February 12, 1989, plaintiff-mother went into labor and at approximately 10:00 p.m. required an epidural and the

reactivation of the epidural three times. However, due to complications with the labor, plaintiff-child was delivered through Cesarean-Section. Subsequent to plaintiff-child's birth it was determined or diagnosed that plaintiff-child suffered from quadrigeminal arachnoid cysts as well as hydrocephalus.

19. Plaintiff-mother believes and avers that a ventriculoperitoneal shunt was placed due to the enlarged ventricles of plaintiff-child. On or about March 17, 1989, further surgical procedures needed to be performed wherein a left-sided quadrigeminal cistern arachnoid cyst to peritoneal shunt was inserted. Plaintiff-child was discharged on March 19, 1989.

20. Plaintiff-child has been subjected to additional surgical procedures, including but not limited to a procedure performed on April 14, 1989 wherein a new left sided VP shunt was placed by a physician. Plaintiff-mother believes and avers that further shunt revision or the placement of additional shunts have been performed since April, 1989 and continued periodic treatment and examination of plaintiff-child is required to continually rule-out the possibility of infection. Plaintiff-mother believes and avers that additional surgical or other medical procedures or shunt revisions will be required throughout plaintiff-child's life with the associated everyday concern as to whether or not infection will set into plaintiff-child's brain or body.

21. As a direct and proximate result of the conduct of defendants as referred to above and the negligence particulars set forth below, plaintiff-mother sustained the following injuries and damages, all of which may be continuing in nature and character:

a. Plaintiff-mother has been subjected to much emotional pain, suffering, inconvenience, anxiety, distress, depression and confusion;

Appendix A

b. She was forced to give birth to a child who would require extensive medical care throughout the child's life;

c. She was subjected to the physical and emotional pain, suffering, inconvenience and distress associated with at least two premature labor incidents, as well as associated with the labor and delivery of her child;

d. Plaintiff-mother was subjected to an unnecessary surgical procedure with associated risks and complications in the delivery of her child;

e. Plaintiff-mother was not given her rightful choice as to whether or not to terminate the pregnancy;

f. Plaintiff-mother had to completely alter her lifestyle due to the birth of said child and the extensive medical care and treatment required and which will be required.

g. Plaintiff-mother must live, day by day, with the reality and fear that her child's life expectancy is guarded;

h. Plaintiff-mother has lost he ability to enjoy a normal lifestyle with her child and has been and will be required to expend sums of money for past, present and future medical care for the child.

i. Plaintiff-mother has lost the ability to go about and enjoy her normal lifestyle subsequent to the birth of her child and will be unable to pursue the further development of her lifestyle, or such further development of it may be delayed.

Appendix A

22. As a direct and proximate result of the conduct of defendants as referred to above and the negligent particulars set forth below, plaintiff-child sustained the following injuries and damages, all of which may be continuing in nature and character:

a. Plaintiff-child has been subjected to much emotional and physical pain, suffering, inconvenience, anxiety and distress;

b. Plaintiff-child was subjected to premature labor on two separate occasions while in plaintiff-mother's womb, which created additional physical pain, suffering, inconvenience and distress;

c. Plaintiff-child was carried full term and was delivered on or about February 13, 1989 with severe fetal abnormalities and complications;

d. Plaintiff-child was subjected to many necessary surgical procedures with associated risks and complications subsequent to the delivery of plaintiff-child which include, but is not limited to the placement of shunts in his brain;

e. Plaintiff-child will in the future be subjected to the risks and complications associated with the surgery required to treat the condition from which he suffers and the replacement of shunts periodically through the remainder of his life;

f. Plaintiff-child has been and will be subjected to the risks and complications of infection, seizures and other disabilities which may cause him future injuries and damages and death;

g. Plaintiff-child has lost and will never gain the ability to enjoy a normal lifestyle and he will be required to expend or his guardian will be required to expend sums of money for past, present and future medical care required for plaintiff-child;

h. Further surgical procedures will be required upon plaintiff-child with the associated physical and emotional pain, suffering, inconvenience, distress, anxiety, embarrassment and humiliation;

i. Plaintiff-child has sustained a loss of life expectancy and a loss of potential learning capacity.

COUNT I — TORT
TANEIKA JAMES V. ALL DEFENDANTS

23. The allegations set forth in paragraphs 1 through 22 above are hereby incorporated by reference into Count I of this complaint as though the same were to be repeated at length herein.

24. At all times material, defendants had a duty of care to plaintiff-mother and to the fetus within her, which entailed the following:

a. To use all available means to determine the results of the October 25, 1988 sonogram;

b. To inform plaintiff-mother of the results of the October 25, 1988 sonogram in a timely manner; and

c. To provide accurate information to plaintiff mother on the condition of her unborn child to enable plaintiff-mother to make informed decisions on all possible alternatives.

d. To inform the plaintiff-mother's attending physician of the results of the October 25, 1988 sonogram in a timely manner.

25. Defendants breached all of the above mentioned duties of care to plaintiff-mother, and defendants' conduct, actions or omissions were negligent and careless in the following particulars:

a. In failing to inform plaintiff mother of the findings of the October 25, 1988 sonogram;

b. In failing to inform in a timely manner the physician attending to wife-mother (i.e. the physician who ordered the sonogram performed October 25, 1988) of the findings of the October 25, 1988 sonogram.

c. In failing to discuss in a timely manner with plaintiff-mother the results, alternatives, risks and complications associated with the results of the October 25, 1988 sonogram;

d. In failing to determine whether or not a report had been sent by any of the defendants and/or in failing to determine whether or not such a report had been received by plaintiff-mother's attending physician;

e. In failing to use all available means to convey in timely manner the results of the October 25, 1988 sonogram;

f. In otherwise failing to exercise that degree of care due and owing to plaintiff-mother under the circumstances;

g. In knowing or having reason to know that plaintiff-

mother's child had a fetal abnormality and in failing to inform plaintiff-mother immediately.

h. In knowing or having reason to know that plaintiff-mother's child had a fetal abnormality and in failing to inform plaintiff-mother's attending physician immediately.

26. As a direct and proximate result of the negligent or careless conduct of defendants as set forth above, plaintiff-mother has sustained those injuries and damages set forth in paragraphs 15, 16, 17, 18 and 21 above.

WHEREFORE, plaintiff-mother hereby demands judgment in her favor and against all defendants in an amount in excess of $20,000.00 and in an amount in excess of the jurisdiction of the Arbitration Division of the Court, plus costs.

COUNT II — TORT
LOUIS EDMONDS, A MINOR BY TANEIKA JAMES, MOTHER AND NATURAL GUARDIAN
V. ALL DEFENDANTS

27. The allegations set forth in paragraphs 1 through 26 above are hereby incorporated by reference into Count II of this Complaint.

28. At all times material, defendants had the duty of care to the plaintiff-child wherein said duty of care is set forth in paragraph 24 above.

29. All defendants breached all of the above mentioned duties of care to plaintiff-child and defendant's conduct, actions or

omissions were careless in the particulars which are set forth in Count I of the Complaint.

30. As a direct and proximate result of the negligence or carelessness of the defendants, plaintiff-child has sustained those injuries and damages as set forth in paragraphs 19, 20 and 22 above.

WHEREFORE, plaintiff-child hereby demands judgment in her favor and against all defendants in an amount in excess of $20,000.00 and in an amount in excess of the jurisdiction of the Arbitration Division of the Court, plus costs.

Respectfully submitted,
s/ Bruce S. Gelman
Bruce S. Gelman

Appendix A

§ 4904. Unsworn falsification to authorities.

(a) In general. — A person commits a misdemeanor of the second degree if, with intent to mislead a public servant in performing his official function, he:

(1) makes any written false statement which he does not believe to be true:

(2) submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity; or

(3) submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false.

(b) Statements "under penalty."—A person commits a misdemeanor of the third degree if he makes a written false statement which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.

(c) Perjury provisions applicable. — Section 4902(c) through (f) of this title (relating to perjury) applies to this section.

1972, Dec. 6, P.L.—, No. 334, § 1, eff. June 6, 1973.

Appendix A

VERIFICATION

Now comes Taneikia James, Plaintiff in the civil action at which the foregoing document is intended to be filed of public record, who verifies that the facts set forth in the foregoing Civil Action are true and correct to the best of his/her knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C. S. § 4904, relating to unsworn falsification to authorities, which provides for criminal penalties if a person with intent to mislead makes a written false statement which he/she does not believe to be true.

Date: July 12, 1990 s/ Taneika M. James